

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NATIONAL OILWELL VARCO, L.P., Plaintiff	§ § § § § § §	CIVIL ACTION NO. 1:12-CV-00773 Judge Sam Sparks <u>JURY TRIAL DEMANDED</u>
v.		
OMRON OILFIELD & MARINE, INC., Defendant		

**NOV’S SUR-REPLY TO OMRON’S REPLY BRIEF IN SUPPORT OF ITS MOTION TO
DISMISS, FOR DEFAULT JUDGMENT, AND FOR SUMMARY JUDGMENT**

Plaintiff National Oilwell Varco, L.P. (“NOV”) respectfully files this sur-reply to Omron’s reply brief (Doc.No. 148-1) in Support of its Motion to Dismiss, for Default Judgment, and for Summary Judgment.

1. Omron’s reply relies heavily on the Federal Circuit’s holding in *Abraxis Bioscience, Inc. v. Navinta, L.L.C.*, 625 F.3d 1359, 1361 – 65 (Fed. Cir. 2010).¹ Omron’s assessment of *Abraxis* is misplaced. The Federal Circuit in *Abraxis* held that the asset purchase agreement in question was not a valid transfer for one single reason – the transferring entity did not own the patents-in-suit:

At that time [time of the asset purchase agreement] AZ-UK could not assign the patents because it did not possess their titles. AZ-UK had no legal title to assign and, therefore, lacked standing to commence litigation.

Abraxis, 625 F.3d at 1365 – 66 (emphasis added). Since AZ-UK did not own the patents until after execution of the agreement, the agreement could not have transferred the patents. *Id.* *Abraxis* is completely different than the case at bar. Omron does not dispute that Varco, L.P. owned the ‘142 patent at the time the asset purchase agreement was executed.²

¹ Doc.No. 148-1 at 4, 9.

² See Doc.No. 140-3 (NOV’s Response to Omron’s Motion) at 3 – 7.

2. Omron also cited a Delaware case about a gas utility which sought to raise its rates. *Chesapeake Utilities Corp. v. Delaware Pub. Serv. Comm'n*, 705 A.2d 1059 (Del. Super. 1997). *Id.* The case defined “intangible asset” under the state statute pertaining to environmental cleanup expenses. This case has no relevance here. The parties to the Varco/National Oilwell agreement defined “physical assets” to include “Patents.”³ Any other reading of the asset purchase agreement would ignore the plain language of the agreement and the intent of the parties.

Date: January 6, 2015

Respectfully submitted,

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³ Ex. C to Doc.No. 145 (deposition of NOV’s corporate representative)(confirming that Exhibit A to the asset purchase agreement was “an *example* of the *type* of assets that were owned by Varco, L.P. that were transferred to National Oilwell Varco, L.P.”)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document and all attachments are being served on all counsel of record via electronic mail as addressed below, on January 6, 2015.

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